

In the Matter of the Compensation of
SALVADOR A. MENDOZA, Claimant
WCB Case No. 23-00977
ORDER OF DISMISSAL (REMANDING)
Welch Bruun & Green, Claimant Attorneys
SBH Legal, Defense Attorneys

Reviewing Panel: Members Curey and Ceja.

The Board has received claimant's request for review of Administrative Law Judge (ALJ) Somers's order that deferred this matter pending a medical arbiter examination. Because we conclude that the ALJ's order is not a final order, we dismiss the request for review.

FINDINGS OF FACT

A December 20, 2022, Notice of Closure awarded temporary disability, but no permanent disability, for claimant's right hand conditions. (Ex. 53-1). Claimant requested reconsideration.

On February 2, 2023, an Order on Reconsideration found that the claim was prematurely closed and set aside the Notice of Closure. (Ex. 54-3). In addition, the reconsideration order stated that claimant had requested a medical arbiter examination, but that the examination was never scheduled because the Notice of Closure was set aside. (Ex. 54-1). The self-insured employer requested a hearing.

CONCLUSIONS OF LAW AND OPINION

On August 2, 2023, the ALJ found that the claim was not prematurely closed. Moreover, because a medical arbiter examination was requested but never scheduled, the ALJ deferred further proceedings pending receipt of a medical arbiter's report. Specifically, the ALJ directed the parties to contact the Director to schedule a medical arbiter examination and to contact the Hearings Division after the completion of the examination. The ALJ's order did not contain a statement explaining the parties' rights of appeal pursuant to ORS 656.289(3). Claimant requested Board review.

A final order is one which disposes of a claim so that no further action is required. *Price v. SAIF*, 296 Or 311, 315 (1984). A decision that neither denies the claim, nor allows it and fixes the amount of compensation, is not an appealable final order. *Lindamood v. SAIF*, 78 Or App 15, 18 (1986).

Here, the ALJ's August 2, 2023, order neither finally disposed of, nor allowed, the claim. In addition, the order did not fix the amount of compensation. Rather, the ALJ's order was "interim" in nature. Specifically, the order deferred further proceedings pending receipt of a medical arbiter's report. In addition, the order directed the parties to contact the Director to schedule a medical arbiter examination and to contact the Hearings Division after the completion of that examination.

Therefore, as a result of the ALJ's August 2, 2023, order, further action is required at the Hearings Division to determine claimant's entitlement to compensation, if any. Under such circumstances, we find that the ALJ's order is not a final order. *See Price*, 296 Or at 315; *Lindamood*, 78 Or App at 18; *Christopher R. Norris*, 54 Van Natta 2013, 2014 (2002) (ALJ's order that deferred proceedings pending the scheduling of a medical arbiter panel examination was not a final order).

Consequently, jurisdiction to consider this matter continues to rest with the ALJ. *See Norris*, 54 Van Natta at 2014. Any Board review of the procedural and substantive decisions reached by the ALJ in this case must await issuance of the ALJ's eventual final order (assuming that a party timely seeks Board review). *Id.*

Accordingly, because jurisdiction to consider this matter continues to rest with the Hearings Division, the request for review is dismissed. This case is remanded to ALJ Somers for further action consistent with the August 2, 2023, order.

IT IS SO ORDERED.

Entered at Salem, Oregon on September 22, 2023